



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 6, 1992

Ms. Patricia Hernandez
Associate General Counsel
Texas Tech University
Texas Tech University Health Sciences Center
P. O. Box 4641
Lubbock, Texas 79409-2021

OR92-4

Dear Ms. Hernandez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14271.

You have received a request for copies of documents relating to Texas Tech University ("the university") employees who are either African-American, Hispanic, or female. The requestor seeks information contained in thousands of applications for employment filed over a period of eleven or more years. The requestor also asks for lists of applicants and employees organized in categories specified in her request letter. You have written to the requestor, informing her that some of the information is being compiled and that other items do not exist in the form requested. You inform us that manual file research or additional computer programming would be necessary to make this information available. You assert that compliance with the request for information would require an inordinate amount of staff work and would involve considerable cost. You seek our general advice on the extent to which the university must make this information available. You do not object to release of some of the information but claim that some of it is protected from required public disclosure by the privacy aspect of section 3(a)(1) of the Open Records Act.

When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision Nos. 563, 561 (1990). However, there is no basis in previous open records decisions for a governmental body to deny access to information merely because the requestor has not narrowed his request. The Texas Supreme Court addressed a similar concern about a request for a massive amount of information. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 686-87 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that "the Act does not allow either the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed." *Id.*; see also Open Records Decision No. 151 (1977). A requestor, however, may be required to post bond or prepay the costs of preparing records as a condition precedent when preparation of requested information is unduly costly and reproduction would cause undue hardship if costs were not paid. V.T.C.S. art. 6252-17a, § 11; see also Open Records Decision No. 467 (1987) at 6; 1 T.A.C. §§ 111.61 - 111.63 (copy enclosed).

As regards the form of the information, Open Records Decision No. 467 (1987) held that the Open Records Act does not require the preparation of information in a form requested by a member of the public. See also Attorney General Opinion JM-672 (1987); Open Records Decision No. 462, 458 (1987). Open Records Decision No. 572 (1990) held that the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information or to provide answers to general inquiries. See also Open Records Decision No. 555 (1990). Similarly, a governmental body is not required to answer factual questions or to perform research. See Open Records Decision Nos. 563 at 8, 555 (1990). Accordingly, you need not disclose the requested information in any manner other than in that in which it currently exists. However, a request may not be denied merely because it requires a *minimal* computer search. Attorney General Opinion JM-672.

You ask whether applications for employment are excepted from required public disclosure by the privacy aspect of section 3(a)(1) of the Open Records Act.¹ This section protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Foundation, supra*. See also *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision No. 441 (1986). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

You have not submitted to us for review information responsive to the request; consequently, we are unable to determine whether any of the requested information must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. However, for your convenience, we will list some types of information previously held by this office to be public or confidential. Because this list is not all-inclusive and can not anticipate the actual contents of the requested information, you may need to submit to our office representative samples of the requested information so that we may make a more specific determination. Please submit such information that you have already located within 14 days of the receipt of this letter. If your search of your files uncovers other information that you wish to withhold, please send it at that time.

Information previously held by this office not to be protected by common-law privacy interests includes applicants' and employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performances or abilities, names of friends or relatives employed by the governmental body, birth dates, height, weight, marital status, and social security number. See Open Records Decision No. 455 (1987).

Information protected by common-law privacy includes information about illnesses and operations and physical handicaps of applicants and employees. *Id.* Medical records created by or under the supervision of a physician or maintained by

¹Please note that you must withhold the address and telephone numbers of employees who have complied with the provisions of section 3A of the Open Records Act. See also Open Records Decision No. 530 (1989) (a governmental body may not solicit a response from its employees under section 3A(b) in response to a pending open records request).

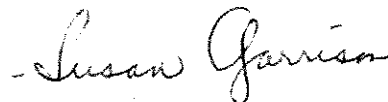
a physician are excepted from disclosure under section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act. *See also* Open Records Decision No. 324 (1982). Copies of prescriptions and a physician's note are excepted by this provision, as are clinic notes prepared by a nurse acting under a physician's supervision. Such information must be withheld from required public disclosure.

Personal financial information is also excepted from required public disclosure by common law privacy interests. Open Records Decision No. 545 (1990) at 3 held that "[p]ersonal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." This decision further held that "an individual's investment decisions with respect to a deferred compensation plan, including his choice of investment product and the amounts invested in a product, are not of those kinds of financial transactions that are ordinarily of legitimate public interest." *Id.* at 4. Accordingly, the requested information must be withheld from required public disclosure to the extent that it reflects the personal financial decisions of the employees.

W-4 forms are made confidential by statute and are thus excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." W-4 forms are made confidential by federal law and must be withheld from required public disclosure. 26 U.S.C. § 6103(a)(2), b(2)(A), (p)(8); *see also* Attorney General Opinion MW-372 (1981).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-4.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

SG/GK/lcd

Ref.: ID# 14271

Enclosures: Open Records Decision Nos. 563, 561, 555, 467, 455, 441
Attorney General Opinion JM-672 (1987)

cc: Ms. Marian E. Hampton
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